



FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

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AUG - 7 2007

Brian G Svoboda, Esq
Perkins Coie
607 Fourteenth Street N W
Washington, DC 20005-2011

RE MUR 5862
Friends of Joe Lieberman
and Lynn Fusco, in her official
capacity as treasurer

Dear Mr Svoboda

On October 30, 2006 and November 8, 2006, respectively, the Federal Election Commission notified your clients, Friends of Joe Lieberman and Lynn Fusco, in her official capacity as treasurer, of a complaint and a supplement to the complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. Copies of the complaint and the supplement were forwarded to you and your clients at those times.

Upon further review of the allegations contained in the complaint, and information supplied by your clients, the Commission, on July 24, 2007, found that there is reason to believe that your clients, Friends of Joe Lieberman and Lynn Fusco, in her official capacity as treasurer, violated 2 U S C §§ 432(h) and 434(b). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office, _____, within 30 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C F R § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

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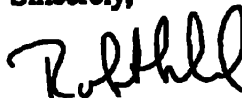
Brian G Svoboda, Esq
MUR 5862
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Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

If you have any questions, please contact Roy Q. Lockett, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Robert D. Lenhard
Chairman

Enclosures
Factual and Legal Analysis

cc Senator Joseph Lieberman

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT. Friends of Joe Lieberman and Lynn Fusco, MUR 5862
in her official capacity as treasurer

I. INTRODUCTION

The complaint in this matter alleges that Friends of Joe Lieberman and Lynn Fusco, in her official capacity as treasurer, (the "Committee") failed to properly disclose and account for more than \$387,000 reported in the Committee's 2006 October Quarterly Report as "petty cash" expenditures, most of them for the purported purpose of paying stipends to volunteers in the two weeks preceding the primary election. A supplement to the complaint raises an additional allegation stemming from a press account in which two Committee consultants reportedly stated that they were paid only once for their services to the Committee, but the Committee reported two payments to each, the two payments allegedly double counted by the Respondents collectively totaled \$20,450.

In response to the complaint and the supplement, the Committee concedes that an inadvertent error made by its payroll service caused duplicate entries of payments to the two consultants that should have been reported as one disbursement for each. Although the Committee stated that it would amend the appropriate report, it has not yet done so. With respect to the petty cash allegations, the Committee maintains that it properly paid individuals from a petty cash fund and maintained a petty cash journal that recorded the name, address, date, amount, and purpose for each purchase or transaction, but did not provide the journal with its response. The Committee also asserts that it was not obligated to itemize its petty cash expenditures, even if individuals received payments that exceeded \$200 over the course of several days. Indicating that the payments may

have actually been disbursed through "middlemen," it further contends that Advisory Opinion 1983-25 suggests that committees need not sub-itemize payments made by vendors or temporary agencies on the committee's behalf

As discussed in more detail below, the Commission has found reason to believe that the Respondents violated 2 U S C §§ 432(h) and 434(b) in connection with the dispensing, reporting, and recordkeeping related to the disclosed disbursements, and 2 U S C § 434(b) in connection with the apparent double counting of payments to two consultants in its 2006 October Quarterly Report

II. FACTUAL AND LEGAL ANALYSIS

A. Facts

In its 2006 October Quarterly Report, the Committee disclosed 13 disbursements totaling \$387,561 that were made from July 25, 2006 through August 7, 2006, or within two weeks of Connecticut's August 8, 2006 Primary Election, in which Joe Lieberman was a candidate for reelection to the United States Senate. On Schedule B of the report, on the "Full Name" line of each of these disbursements, the term "petty cash" appears, and for ten of them, the reported "Purpose of Disbursement" line is "STIPEND VOLUNTEERS" OR "STIPEND VOLUNTEER PAYMENTS". The ten disbursements, so described, totaled \$384,061 and are set forth in the following table

Date of Disbursement	Purpose of Disbursement	Amount
1) July 26, 2006	STIPEND VOLUNTEERS	\$34,000
2) July 26, 2006	STIPEND VOLUNTEERS	\$23,000
3) July 26, 2006	STIPEND VOLUNTEERS	\$5,000
4) July 27, 2006	STIPEND VOLUNTEERS	\$32,500
5) July 31, 2006	STIPEND VOLUNTEER PAYMENT	\$1,056
6) August 2, 2006	STIPEND VOLUNTEER PAYMENT	\$67,500
7) August 2, 2006	STIPEND VOLUNTEERS	\$6,000
8) August 4, 2006	STIPEND VOLUNTEERS	\$135,000
9) August 7, 2006	STIPEND VOLUNTEERS	\$75,000
10) August 7, 2006	STIPEND VOLUNTEERS	\$5,005
	Total	\$384,061

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The remaining three disbursements reported as "petty cash" totaled \$3,500. Their purposes were described variously as shown in the table below:

Date of disbursement	Purpose of disbursement	Amount
1) July 25, 2006	GAS CARDS WATER	\$500
2) July 26, 2006	GAS/WATER	\$2,500
3) July 29, 2006	FOOD & BEVERAGE	\$500
	Total	\$3,500

In addition, the Committee's 2006 October Quarterly Report disclosed two payments of \$8,250 each to Tom Reyes on August 4, 2006 and August 15, 2006, and two payments of \$12,200 each to Daryl Brooks on August 11, 2006 and August 15, 2006. Although conceding in its response that one of the payments to Reyes and one of the payments to Brooks were disclosed in error, the Committee has not amended this Report.

B. Analysis

1. Disbursements Reported as "Petty Cash"

The Act provides that a political committee shall not make a disbursement in any form other than by check drawn on the committee's account at its designated campaign depository. 2 U.S.C. § 432(h)(1). However, as an exception to that requirement, the Act permits a political committee to maintain a petty cash fund for disbursements not in excess of \$100 to any person in connection with a single purchase or transaction. 2 U.S.C. § 432(h)(2). If such a cash fund is maintained, the treasurer must keep a written journal of all disbursements, which shall include the name and address of every person to whom any disbursement is made, and the date, amount, and purpose of such disbursement. See 2 U.S.C. § 432(c)(5). The Act also requires that political committees disclose the name and address of each person to whom it has made an expenditure in an aggregate amount or value in excess of \$200 within the calendar year to meet a committee or candidate operating

1 expense, together with the date, amount and purpose of such operating expenditure, and keep
2 records, including receipts, invoices, or cancelled checks, for each disbursement over \$200
3 2 U S C § 434(b)(5)(A)

4 The complaint and complaint supplement (collectively "the complaint") allege that the
5 Committee violated the Act in several ways First, the complaint contends that the Committee
6 used petty cash to make payments in excess of \$100 in violation of 2 U S C § 432(h) Second, it
7 asserts that for disbursements in excess of \$200, the Committee failed to disclose the name and
8 address of every person to whom any disbursement was made, as well as the date, amount, and
9 purpose of such disbursement Third, it alleges that "there is no evidence that the Lieberman
10 committee kept and maintained a written journal of any kind regarding these disbursements " In
11 support of its allegations, the complaint references and attaches two news articles The first news
12 article reports that Lieberman campaign spokeswoman Tammy Sun described the petty cash
13 disbursements as funds that were "paid to field coordinators who then distributed money to workers
14 who were canvassing " See Andrew Miga, *Lamont Questions Lieberman's Spending*, Associated
15 Press via Boston Globe, October 22, 2006 The second news article reports that two canvassers
16 stated that they each received \$60 a day out of a supposed petty cash fund See Mary E O'Leary,
17 *Lamont files an FEC complaint over Lieberman's expenditure of petty cash*, New Haven Register,
18 November 2, 2006 Their total payments over a period of several days reportedly amounted to \$480
19 and \$360, respectively *Id* One canvasser further reportedly stated that an estimated 30 other
20 teenagers also received "\$60 a day in cash over a few weeks " *Id* The complaint alleges that
21 although required by the Act, none of these disbursements are itemized in any of the Lieberman
22 Committee's reports

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1 In response, the Committee acknowledges that as part of its Get out the Vote ("GOTV")
2 effort, it "paid individuals a stipend from petty cash of \$60 per day for conducting GOTV," and
3 likewise confirms that it "paid field consultants and temp[orary employment] agencies to supply
4 additional workers during this period " Response at 1 However, the Committee does not
5 specifically state whether the disbursements reported as petty cash in its 2006 October Quarterly
6 Report were made to field consultants and temporary employment agencies who then distributed the
7 funds to the canvassers, as reportedly stated by the Committee's spokeswoman, and if so, in what
8 form and in what amounts the funds were transmitted by the Committee to such "middlemen "

9 Moreover, the Committee maintains that the roster of individuals who received \$60 per day
10 for canvassing work was "fluid" in that there was no set minimum or maximum length of service
11 *Id* at 2 As such, the Committee states "unquestionably there were individuals who received a
12 stipend of \$60/day, and worked in excess of four days " *Id* However, the Committee maintains
13 that it was not obligated to itemize this type of "petty cash" disbursement The Committee also
14 disputes the allegation that it failed to meet its recordkeeping obligations, noting that it maintained a
15 "petty cash journal and recorded the name, address, date, amount and purpose for each purchase or
16 transaction," which it claims is all that the Act and the Commission's regulations require for petty
17 cash disbursements *Id* In support, the Committee cites Advisory Opinion ("AO") 1983-25
18 (Mondale for President) for the proposition that committees are not required to sub-itemize
19 payments made by vendors that may subcontract work to others

20 The Committee's response does not adequately describe the circumstances under which the
21 funds were dispensed In any case, however, it appears that the Committee may have violated the
22 Act

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1 If the Committee distributed the funds directly to the canvassers in amounts of \$100 or less
2 for each day, then it would have been permitted to use petty cash to make the disbursements
3 However, section 434(b)(5) requires the itemization of expenditures whenever a person receives
4 from the reporting committee an expenditure in an aggregate amount or value in excess of \$200
5 within the calendar year to meet a candidate or committee operating expense " (Emphasis added)
6 The Committee was therefore obligated to itemize all expenditures to a person once they aggregated
7 in excess of \$200 It concedes "unquestionably there were individuals who received a stipend of
8 \$60/day and worked in excess of four days " Thus, if the Committee directly paid the canvassers,
9 the Committee should have itemized these payments, once they aggregated in excess of \$200, and
10 the apparent failure to do so constitutes a violation of 2 U S C § 434(b) At this point, it is
11 unknown how many canvassers received in excess of \$200 in the weeks before the August 2006
12 primary

13 The Committee may not have directly paid the canvassers, given the large amounts of the
14 disbursements, and the indication that field consultants and temporary agencies were involved in the
15 process If, for example, the largest of these disbursements—the Committee's August 4, 2006 petty
16 cash disbursement for "STIPEND Volunteers" in the amount of \$135,000—represented the
17 Committee's direct payment to canvassers, the following events had to transpire on that date First,
18 the Committee would have had to withdraw \$135,000 in cash From there, the Committee would
19 have had to pay 2,250 individuals \$60 each in cash for canvassing on that date, and keep a journal
20 record of each transaction The logistics involved in such a scenario would be daunting, and the
21 Committee has indicated that it involved vendors in the process Moreover, not only is a scenario
22 whereby the Committee paid the consultants or agencies who then paid the canvassers consistent

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1 with the reported statements by the Committee's spokeswoman, it also explains the Committee's
 2 reliance on AO 1983-25 in its response ¹ Thus, the Committee may have provided field consultants
 3 and temporary agencies with the funds needed to pay the canvassers If such disbursements
 4 exceeded \$100, they should not have been made with cash, 2 U S C § 432(h)(2), but should have
 5 been transmitted by check paid to the consultants or agencies, 2 U S C § 432(h)(1), and itemized as
 6 payments made to vendors ² See 2 U S C § 434(b)(5)

7 Assuming that the reported petty cash disbursements actually were made to vendors, this
 8 also raises questions concerning the Committee's reported payments to five different field
 9 consultants during the same time-period The Committee's 2006 October Quarterly Report shows
 10 that between July 20, 2006 and August 4, 2006 it paid field consultants JEF Associates, James Gee,
 11 Chris Lavery, Tomas Reyes, and Dan Robinett a total of approximately \$107,000 in fees ³ The
 12

¹ The Commission advised in AO 1983-25 that a committee that itemize disbursements to vendors did not have to further sub-itemize payments made by the vendor to others on behalf of the committee This proposition makes sense in these circumstances if the Committee had paid the consultants and agencies, and who then paid the canvassers However, it would make no sense if the Committee directly paid the canvassers, since there would be no other payments to sub-itemize If, as is suggested, the Committee transmitted large amounts of cash to "middlemen" who then paid the canvassers, this situation would be incompatible with the Act's petty cash provision, not only because it involves more than \$100 per transaction, but because it also involves more than one transaction one from the Committee to the vendor to provide services of retaining and distributing funds to the canvasser(s), and one from the vendor to canvasser(s) to perform canvassing duties See 2 U S C § 432(h)(2) (petty cash disbursements involve a "single purchase or transaction") The Committee's reliance on this advisory opinion also appears misplaced because if the payments were made to vendors, the Committee did not accurately disclose this in its 2006 October Quarterly Report

² The Commission has previously investigated whether large cash disbursements distributed through middlemen on a committee's behalf complied with the Act's reporting and recordkeeping provisions In MUR 4648 (New York Republican Federal Campaign Committee ("NYGOP")), the Commission found probable cause to believe that the NYGOP, which had initially disclosed disbursements as "election day expenses," had violated the Act where the disbursements went by check to certain individuals, who then cashed those checks for ultimate distribution to unknown persons on behalf of the Committee Ultimately, the matter conciliated with the NYGOP paying a civil penalty of \$128,000

³ In its 2006 October Quarterly Report, the Committee disclosed making four disbursements to JEF Associates totaling \$84,000 between July 20, 2006 and August 7, 2006 As for the remaining consultants, on August 4, 2006, the Committee made one disbursement each to James Gee (\$7,000), Chris Lavery (\$4,500), Tommy Reyes (\$8,250) and Dan Robinett (\$3,000)

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1 Committee also disclosed in that Report other expenditures totaling at least \$110,000 made during
2 the same timeframe that may have been tied to canvassing work⁴

3 Therefore, there is reason to believe that Friends of Joe Lieberman and Lynn Fusco, in her
4 official capacity as treasurer, violated 2 U S C §§ 432(h)(1) and (2) and 434(b)

5 **2. Misreporting of Payments to Consultants**

6 The Act requires that political committees disclose the total of all disbursements,
7 including expenditures made to meet candidate or committee operating expenses 2 U S C
8 § 434(b)(4)(A) Further, authorized political committees such as the Committee must accurately
9 disclose the total sum of all operating expenditures that are made for both the reporting period and
10 the election cycle 2 U S C § 434(b)(7)

11 As noted above, the complaint alleges that the Committee may have misreported payments
12 to two consultants, Tom Reyes and Daryl Brooks, in its 2006 October Quarterly Report According
13 to that Report, the Committee paid Reyes two checks in the amount of \$8,250, one on August 4,
14 2006 and one on August 15, 2006 The Report also discloses a \$12,000 payment to Brooks on
15 August 11, 2006 and another check for the same amount to Brooks on August 15, 2006 Both men
16 have reportedly stated that they each only received one payment from the Committee *See Mary E*
17 *O'Leary, Lamont files an FEC complaint over Lieberman's expenditure of petty cash, New Haven*
18 *Register, November 2, 2006*

19 In response, the Committee concedes that an inadvertent error by the Committee's payroll
20 service resulted in its disclosure report double counting one payment made to each consultant, and

⁴ As disclosed in the Committee's 2006 October Quarterly Report, this total amount includes expenditures for rental car transportation (46,078 85), pre-paid gas cards (\$43,200 00), lodging (\$13,069 00), temporary personnel (\$6,472 00), and food/beverage (2,053 44) These expenditures were made between July 18, 2006 and August 6, 2006

1 stated that it would amend its report to correct this error Response at 3 However, to date the
2 Committee has failed to do so, the Committee's amended 2006 Quarterly Report, which was filed
3 on February 20, 2007—after its December 18, 2006 response to the complaint—does not correct the
4 prior misreporting

5 Therefore, there is an additional reason to believe that Friends of Joe Lieberman and Lynn
6 Fusco, in her official capacity as treasurer, violated 2 U S C § 434(b)

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